Supreme Court, U.S.
FILED
MAY 1 1980
MICHAEL RODAK, JR., CLERK

In the
Supreme Court of the United States

OCTOBER TERM, 1979

NO. 79-1549

ACORN for Itself and its Members,
PAUL COX, STEVE HOLT, BEULAH LABOSTRIE
and BRENDA QUANT,
Plaintiffs and Appellants,

versus

CITY OF NEW ORLEANS, ERNEST MORIAL,
SIDNEY BARTHELEMY, JOSEPH GIARRUSSO,
FRANK FRIEDLER, JIM SINGLETON,
MIKE EARLY, BROD BAGERT,
PHILIP CIACCIO, ERROLL WILLIAMS
and PATRICK KOLOSKI,
Defendants and Appellees,

CONSOLIDATED WITH OTHERS

On Appeal from the Supreme Court of the State of Louisiana

MOTION OF APPELLEE TO DISMISS APPEAL OR TO AFFIRM

SALVADOR ANZELMO
CITY ATTORNEY
ROOM 2W23 - CITY HALL
NEW ORLEANS, LOUISIANA 70112
PHONE: 586-4652

JOSEPH HURNDON
DEPUTY CITY ATTORNEY

GALEN S. BROWN
DEPUTY CITY ATTORNEY

JOSEPH NACCARI
ASSISTANT CITY ATTORNEY

JACKSON P. MCNEELY
ASSISTANT CITY ATTORNEY

DAVID A. MARCELLO
OF COUNSEL

A B Letter Service, Inc., 327 Chartres St., New Orleans, La. (504) 581-5555

INDEX

PAGE

MOTION OF APPELLEE TO DISMISS OR AFFIRM. 2

OPINIONS BELOW. 2

JURISDICTION 3

QUESTIONS PRESENTED. 3

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED. 3

STATEMENT OF THE CASE. 3

ARGUMENT. 5

CONCLUSION 10

CITATIONS

ACORN V. CITY OF NEW ORLEANS, 377 So.2d 1206 (La. 1980) 7,9

DANDRIDGE V. WILLIAMS, 397 U.S. 471, 90 S.Ct. 1153 (1970) 8

GREAT ATLANTIC AND PACIFIC TEA COMPANY V. GROSJEAN, 301 U.S. 412, 57 S.Ct. 772 (1937) 7

MADDEN V. KENTUCKY, 309 U.S. 83, 60 S.Ct. 406 (1940) 6,7

MCGINNIS V. ROYSTER, 410 U.S. 263, 93 S.Ct. 1055 (1973) 5

PERSONNEL ADMINISTRATOR OF MASS. V. FEENEY, 442 U.S. 256, 99 S.Ct. 2282 (1979) 9

SAN ANTONIO INDEPENDENT SCHOOL DISTRICT V. RODRIGUEZ, 411 U.S. 1, 93 S.Ct. 1278 (1973) 5,8

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

No. 79-1549

ACORN for Itself and its Members,
PAUL COX, STEVE HOLT, BEULAH LABOSTRIE
and BRENDA QUANT,
Plaintiffs and Appellants,

versus

CITY OF NEW ORLEANS, ERNEST MORIAL,
SIDNEY BARTHELEMY, JOSEPH GIARRUSSO,
FRANK FRIEDLER, JIM SINGLETON,
MIKE EARLY, BROD BAGERT,
PHILIP CIACCIO, ERROLL WILLIAMS
and PATRICK KOLOSKI,
Defendants and Appellees,

CONSOLIDATED WITH
MRS. ROSEMARY BAYOLO, Wife of, and
JOSEPH S. GEECK, JR.,
Plaintiffs and Appellants,

versus

ERROLL WILLIAMS, Director of Finance of
the City of New Orleans, et al.,
Defendants and Appellees,

CONSOLIDATED WITH
MRS. JANET, Wife of/and EDWIN H. HEATON, et al.,
Plaintiffs and Appellants,

versus

ERROLL WILLIAMS, Director of Finance of
the City of New Orleans, et al.,
Defendants and Appellees,

CONSOLIDATED WITH
JACKSON HOMESTEAD ASSOCIATION, Individually and on Behalf of Others Similarly Situated, and on Behalf of Certain of its Borrowers and SOUTH PINES, INC., Individually and on Behalf of Others Similarly Situated
Plaintitfs and Appellants,

versus

ERROLL WILLIAMS, Director of Finance of the City of New Orleans, et al.,
Defendants and Appellees,

On Appeal from the Supreme Court of the State of Louisiana

MOTION OF APPELLEE TO DISMISS APPEAL OR TO AFFIRM

Appellee moves the Court to dismiss the appeal on the ground that this appeal does not present a substantial federal question or, in the alternative, to affirm the judgment sought to be reviewed on appeal on the ground that it is manifest that the questions on which the decision of this cause depend are so well settled as not to warrant further argument.

I.
OPINION BELOW

The opinion of the Civil District Court, Parish of Orleans, is not reported but can be found in Appendix C. of appellant's jurisdictional statement.

The opinion of the Supreme Court of Louisiana is reported as *Acorn v. City of New Orleans*, 377 So.2d 1206 (La. 1980).

II.
JURISDICTION

The jurisdictional requisites are adequately set forth in appellant's jurisdictional statement.

III.
QUESTIONS PRESENTED

(1) Whether City of New Orleans Ordinance No. 7009, M.C.S., as amended, violates the equal protection clauses of Amendment XIV § 1 of the United States Constitution.

(2) Whether imposition of the tax authorized by Ordinance No. 7009, M.C.S. as amended, violates the taxing scheme provided by the Louisiana State Constitution and thereby denies taxpayers due process of law.

IV.
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Pertinent provisions of the United States Constitution and of Ordinance No. 7009, M.C.S. as amended, are set forth in appellant's jurisdictional statement.

V.
STATEMENT OF THE CASE

On December 28, 1978, the Counsel for the City of New

Orleans passed, and thereafter the Mayor signed, Ordinance No. 7009 M.C.S.; subsequent thereto the Council passed Ordinance Nos. 7110, 7280 and 7286 M.C.S., which amended Ordinance No. 7009 M.C.S. The Ordinance, as amended, levies an annual special real property service charge of $100.00 on the owner of each parcel of real property owned by him separately listed and/or assessed on the Tax rolls of the City of New Orleans for the year of 1979 and for each year thereafter.

Plaintiff, ACORN, a nonprofit politically oriented citizens' group filed a petition on February 9, 1979, attacking the constitutionality of Ordinance No. 7009 M.C.S., as amended, alleging that the Ordinance was violative of the equal protection clauses of the United States and Louisiana Constitution. Subsequent thereto, numerous suits were filed attacking the constitutionally of the Ordinance. The above captioned cause was allotted to Division "E" of the Civil District Court for the Parish of Orleans, the Honorable Gerald Federoff presiding. Upon motion of the City of New Orleans said cases were consolidated for trial. The matter was certified as a class action and a trial on the merits was held on November 12, 1979.

After due proceedings the court rendered judgment determining that Ordinance No. 7009 M.C.S., as amended, was violative of the equal protection clauses of the United States and Louisiana Constitutions. The trial court's decision was appealed to and overturned by the Louisiana Supreme Court which held that the $100 special real property service charge was a specific tax and that the imposition of the charge

was a valid exercise of the taxing powers of the City of New Orleans. The Court further held that the class of parcels of real property, created by the Ordinance, had a rational relationship to a legitimate government revenue raising purpose and was not violative of the Federal and State Constitutional guarantees of equal protection and due process.

VI.
ARGUMENT

In imposing a uniform charge upon the ownership of each parcel of land, the City has satisfied the constitutional requirement of equal protection.

Two tests are traditionally applied in equal protection analysis - the "rational basis" and "strict scrutiny" standards. Laws are tested by the strict scrutiny of courts where they involve an inherently suspect classification (e.g. race) or a fundamental interest (e.g., first amendment freedoms). Ordinance, No. 7009 M.C.S., as amended, involves neither a suspect classification nor a fundamental interest. Accordingly, it need only withstand the rational basis test of equal protection analysis i.e., whether the challenged state action rationally furthers a legitimate state purpose or interest. *McGinnis v. Royster,* 410 U.S. 263, 270, 93 S.Ct. 1055, 1059 (1973), cited in *San Antonio Ind. School Dist. v. Rodriguez,* 411 U.S. 1, 55, 93 S.Ct. 1278, 1308 (1973).

However, as has been noted by this Honorable Court, in the area of taxation, even greater leeway is given to state and local governments in creating classifications.

" The broad discretion as to classification possessed by a legislature in the field of taxation has long been recognized. This Court fifty years ago concluded that 'the fourteenth amendment was not intended to compel the states to adopt an iron rule of equal taxation,' and the passage of time has only served to underscore the wisdom of that recognition of the large area of discretion which is needed by a legislature in formulating sound tax policies. Traditionally classification has been a device for fitting tax programs to local needs and usages in order to achieve an equitable distribution of the tax burden. It has, because of this, been pointed out that in taxation, even more than in other fields, legislatures possess the greatest freedom in classification. Since the members of a legislature necessarily enjoy a familiarity with local conditions which this Court cannot have, the presumption of constitutionally can be overcome only by the most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes. *The burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it.*"

Madden v. Kentucky, 309 U.S. 83, 87-88, 60 S.Ct. 406, 408, (1940) (emphasis supplied). In spite of this plenary grant of discretionary latitude to tax-enacting bodies, appellants assert that the ordinance, imposing a tax of $100 on each parcel of real property separately listed and/or assessed on the tax rolls of the City of New Orleans is not founded upon a *reasonable* distinction because said class includes properties of a diverse nature, i.e., all parcels regardless of physical size or development. (Appellant's Statement as to Jurisdiction page 14).

It has been unclear throughout the course of this litigation, even to the Louisiana Supreme Court, whether appellants have directed their equal protection against the distinction of the class of real property from all other property or against the nature of the class of "parcels of real property" as defined by the Ordinance. See *Acorn v. City of New Orleans,* 377 So.2d at 1216 (La. 1980). In either instance appellant's cause must fail.

If appellant's attack is on the distinction of the class of real property from all other types of property then appellants have failed to meet the test of *Madden* by not negativing every conceivable basis which might support the City's classification, and thus fail to present a substantial federal question.

An attack on the nature of the class on the ground that it includes properties of different values must likewise fail in light of the line decisions this Court has rendered. Legislation may operate with varying effect upon different members of a class and not run afoul of equal protection doctrines thereby.

In the case of *Great Atlantic and Pacific Tea Company v. Grosjean,* 301 U.S. 412, 57 S.Ct. 772 (1937), this Court held that the Louisiana chain store tax, (a specific tax as distinguished from an ad valorem tax) which was based upon the number of stores owned and which imposed a higher rate-per-store upon the ownership of a large number of stores, did not violate equal protection. In reviewing the chain store tax, the Court stated, at 301 U.S. 424, 57 S.Ct. 776:

> "We cannot say that classification of chains according to the number of units must be condemned because another method more nicely adjusted to represent the difference in earning power of the individual stores might have been chosen, for the legislature is not required to make meticulous adjustments in an effort to avoid incidental hardships. It is enough that the classification has reasonable relation to the differences in the practices of small and large chains. The statute bears equally upon all who fall into the same class, and this satisfies the guaranty of equal protection."

The chain store tax is analogous to the tax *sub judice* in that a "parcel of land", like a store, is a unit which can properly be the subject of a uniform specific tax without regard to the size or value of each unit subject to the tax. Such a method of classification for tax purposes does not violate equal protection.

In upholding the constitutionally of the special real property service charge the Louisiana Supreme Court examined several United States Supreme Court cases, among them, *Dandridge v. Williams*, 397 U.S. 471, 90 S.Ct. 1153 (1970), and *San Antonio School District v. Rodriguez*, 411 U.S. 1, 93 S.Ct. 1278 (1973), (both of which dealt with unequal treatment of members within a class), and concluded that:

> "The ordinance before us creates a class of parcels of real estate which has a rational relationship to a legitimate government revenue raising purpose. Within the class, all parcels are taxed equally. While it may be true that the tax has a disproportionately greater impact upon property owners

> with fewer financial resources, we may not find that it violates the guarantee of equal protection on this basis. Any such inequity is for the citizens of New Orleans to correct, through the elective and legislative process." *Acorn v. City of New Orleans*, 377 So.2d at 1218 (La. 1980).

With regard to the question whether the differential impact of certain legislation violates equal protection, this Court recently stated, in *Personnel Administrator of Mass. v. Feeney*, 442 U.S. 256, 99 S.Ct. 2282, 2292, 60 L.Ed.2d 870, 883 (1979):

> "The Equal Protection Guarantee of the Fourteenth Amendment does not take from the States all power of classification. Most laws classify, and may affect certain groups unevenly, even though the law itself treates them no differently from all other members of the class described by the law. When the basic classification is rationally based, uneven effects upon particular groups within a class are ordinarily of no constitutional concern. The calculus of effects, the manner in which a particular law reverberates in a society, is a legislative and not a judicial responsibility." (Citations omitted)

Appellant's argument is one that this Court has heard, scrutinized and ruled upon often. Their appeal presents no novel question of law, no example of invidious discrimination and no showing of unusual or extraordinary burdens upon the members of the taxpaying class. There is, therefore, no need for further argument in this matter.

Appellants have further asserted that the imposition of the instant tax violates the taxing scheme of the Louisiana State Constitution and thereby denies New Orleans's taxpayers due process of law. The trial court, the majority of the Louisiana Supreme Court and two of its three dissenting justices found that the real property charge is a valid exericse of the taxing powers of the City of New Orleans. The tax was imposed by duly elected representatives in accordance with the constitution and laws of the State of Louisiana.

Further, Appellants, in part VII of their Statement as to Jurisdiction, fail to set forth any law or argument for the alleged violation of due process. The "federal question" they posit is entirely insubstantial and should not sustain a finding of appellate jurisdiction.

VII.
CONCLUSION

Appellees respectfully submit that, insofar as appellants assert the invalidity of the class created by the Ordinance No. 7009 M.C.S., as amended, in question or the invalidity of the method of the imposition of the tax it creates, appellants fail to present a substantial federal question to this Honorable Court.

Appellees further respectfully submit that, appellants' assertion that uneven effects upon particular groups within a class strike the classification with nullity as violative of equal protection, presents a question well settled against them by this Court.

WHEREFORE, appellees pray that this appeal be dismissed or in the alternative, that the opinion of the Louisiana Supreme Court be affirmed.

Respectfully submitted,

SALVADOR ANZELMO
CITY ATTORNEY
ROOM 2W23-CITY HALL
1300 PERDIDO STREET
NEW ORLEANS, LOUISIANA 70112
TELEPHONE: 586-4653

JOSEPH HURNDON
DEPUTY CITY ATTORNEY

GALEN S. BROWN
DEPUTY CITY ATTORNEY

JOSEPH NACCARI
ASSISTANT CITY ATTORNEY

JACKSON P. MCNEELY
ASSISTANT CITY ATTORNEY

DAVID A. MARCELLO
OF COUNSEL

CERTIFICATE OF SERVICE

I hereby certify that three copies of the above anf foregoing pleadings has been forwarded to Mr. Stephen R. Bachmann, 628 Baronne Street, New Orleans, Louisiana 70113; Mr. Arthur Ballin, Mr. Frank Dudenhefer, Suite 1121, Carondelet Building, 226 Carondelet Street, New Orleans, Louisiana 70130; Mr. Alvin R. Childress, III, 234 Loyola Avenue, New Orleans, Louisiana 70112; Mr. John F. Robbert, 1304 First N.B.C. Building, New Orleans, Louisiana 70112; Mr. Eugene G. Taggart, Monroe and Lemann, 1424 Whitney Building, New Orleans, Louisiana 70130; and Mr. Norris S. L. Williams, Mr. Gregory C. Thomas, Chaffe, McCall, Phillips, Toler and Sarpy, 1500 First N.B.C. Building, New Orleans, Louisiana 70112, by depositing three copies of same in the U.S. Mail postage prepaid, this 30th day of April, 1980.

SALVADOR ANZELMO
CITY ATTORNEY